

**CHAPTER NO. 337**

**SENATE BILL NO. 1140**

**By Herron, Fowler**

**Substituted for: House Bill No. 466**

**By Maddox, Kisber, Fitzhugh**

AN ACT To amend Tennessee Code Annotated, Title 33, relative to policies of the Department of Mental Health and Developmental Disabilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 33-1-309, is amended by designating the existing language as subdivision (a) and adding the following as new subdivisions to be designated as follows:

(b) All operating guidelines of the division of mental retardation services (hereinafter "division") and its successors shall be adopted pursuant to the procedure set forth in this subdivision. For purposes of this section "operating guidelines" means instructions to service providers that the division deems or intends to be mandatory upon such providers. Interpretive instructions, other nonmandatory guidance from the division and rules adopted pursuant to the Uniform Administrative Procedures Act ("UAPA"), codified at T.C.A. Section 4-5-101 et seq., are not operating guidelines.

(1) The adoption of operating guidelines shall be preceded by notice, public meeting, opportunity for comment and responses to such comments from the division. Provided, however, in those instances in which the division determines that exigent circumstances require that the operating guideline be implemented prior to a public meeting, the division shall begin the process required by this section as soon as reasonably practicable after its implementation.

(2) The division shall provide notice in the Tennessee administrative register which shall include a general description of the subject of the operating guideline, the date, place and time of the public meeting and the opportunity for interested persons to provide oral or written comments. The date of the public meeting shall be no sooner than the first day of the month following the month of publication of the notice. The notice shall also include the name, address and telephone number of a contact person to provide additional information, including, if available, copies of the proposed operating guideline.

(3) A representative of the division shall be present to hear comments at a hearing required by this section. Such representative shall be a person designated by the deputy commissioner of the division who is a director level or higher employee. This designee shall be authorized to conduct the meeting in such a manner as to provide reasonable opportunity for all interested persons to provide comments.

(4) Within thirty (30) days after the meeting, the division shall provide responses to the specific comments received and shall state the reasons for accepting or rejecting the comments. The division shall

maintain an official record of the meeting, submitted comments and any responses.


(c) Mandatory instructions meeting the definition of operating guidelines set forth in subdivision (b) which have been implemented prior to the effective date of this section shall not be required to be readopted pursuant to the provisions of subdivision (b) unless the division receives a petition signed by twenty-five (25) interested persons requesting a public meeting on such instruction. In such case, the division shall provide notice, a public meeting, opportunity for comment and responses to comment as set forth in subdivision (b). An instruction that is the subject of such petition shall remain in effect. In the event that a proper petition is presented under this subdivision and the division determines that the same or substantially related issues are under consideration as a proposed operating guideline, the matters may be consolidated to avoid duplication.

(d) All methodology utilized by the division for determining payment to service providers shall be adopted as rules in accordance with the Uniform Administrative Procedures Act ("UAPA"), codified at T.C.A. Section 4-5-101 et seq. which shall be consistent among providers providing substantially the same services.

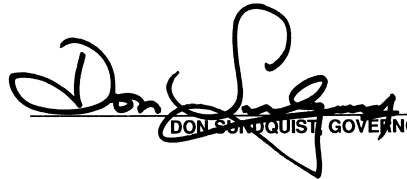
SECTION 2. This act shall take effect July 1, 2001, the public welfare requiring it.

**PASSED: May 24, 2001**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 5<sup>th</sup> day of June 2001**

  
DON SUNDQUIST, GOVERNOR